THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE R.KANTHA RAO

COMPANY APPEAL Nos.15 and 23 of 2003,
WRIT PETITION Nos.3780 and 17814 of 2004,
COMPANY PETITION Nos.55 of 2002, 15, 56, 57, 75, 76, 77, 87, 91, 93, 94, 101, 102, 113, 115, 117, 123, 126, 127, 129, 130, 131, 132, 134 , 135 and 153 of 2003; 80, 162, 190 and 195 of 2004; 109, 110, 119 of 2005 and 77 of 2006

JUDGMENT: (per BPR, J)

The main appeal being C.A.No.15 of 2003 has come up before us on a reference made by the learned Single Judge vide his order, dated 18.11.2003. Thereupon, we have taken up the main appeal along with connected batch cases, which have been posted.

Heard Sri M.Anil Kumar, learned counsel appearing for the appellant and Sri Ch.Ramesh Babu, Sri B.Kantha Rao, learned Senior Counsel, Sri V.S.Raju, Sri P.Prabhakar Rao, Sri C.Ramesh Sagar, Sri Deepak Bhattacharjee, Sri S.Ravi, learned Senior Counsel appearing on behalf of Sri C.V.Narasimham, and
Sri E.Manoher, learned Senior Counsel.

C.A.No.15 of 2003 has been filed by M/s.Nagarjuna Finance Limited (for brevity, it will be referred as NFL Company) against order, dated 23.06.2003 passed in C.P.No.27 of 2003 by the Company Law Board (CLB).

The NFL Company has filed C.P.No.27 of 2003 before the CLB for rescheduling the repayment of matured deposits collected by the said company. The CLB by its order, dated 26.06.2003 dismissed the

said application. The NFL Company aggrieved by the said order, has filed the present appeal being C.A.No.15 of 2003. During the pendency of the appeal, the appellant has filed Application No.693 of 2003 to direct the Promoter, erstwhile Directors and other holding companies to arrange the funds for repayment of fixed deposits on 05.08.2003. Further, the appellant has sought for a direction from this Court to conduct investigation into the affairs of the company by making allegations against the promoter and erstwhile Directors of the NFL Company. During the pendency of the said application, the appellant has also filed Application No.802 of 2003 to implead the Promoter, erstwhile Directors and the other holding companies as respondent Nos.4 to 22 on the ground that Promoter and holding companies have filed an affidavit assuring the repayment of deposits by the NFL Company. This Court has ordered notice to the proposed respondents. The proposed respondents have filed counter affidavits and opposed for impleading. When the matter came up for hearing, the learned Single Judge while observing that the matter involves considerable importance involving larger public interest, formulated the following three points and referred the matter to the Division Bench for adjudication.

1) *Whether the Company Court exercising its jurisdiction under the provisions of the Companies Act, 1956 can direct investigation into the affairs of a company by an independent agency like the Central Bureau of Investigation or any other independent investigating agency by lifting the corporate veil?*
2) *Whether a person not a party to the proceedings before the Company Law Board can be impleaded as party-*

respondent in appeal arising from an order of the Company Law Board under Section 10-F of the Companies Act, 1956? and

3) *Whether failure of the company to repay the deposited amounts to the deposit-holders, can be challenged, as a matter of public interest in an appeal under Section 10-F of the Companies Act, 1956 filed against an order of Company Law Board?*

BACKGROUND OF THE CASE:

Originally, the NFL Company was incorporated in 1982 by Promoter Sri K.S.Raju and others under the Companies Act, 1956 (for short 'the Act') and functioned as Non-Banking Finance Company under the Reserve Bank of India Act, 1934 (for short 'the 1934 Act'). The Company, being Finance Company, was classified as Hire Purchase Finance Company by the Reserve Bank of India (R.B.I.) Guidelines. The Company has accepted the deposits and conducted business in hire purchase finance business. The Company has conducted the business till 1996 and 1997. Due to change of regulations by the R.B.I. regarding limits of acceptance of deposits by non-banking finance companies, the Company could not accept any further deposits and consequently the Company was forced to refund the deposits already collected.

It appears, the Company has faced lot of financial crunch from 1998 and it was not able to repay the deposits in time. Hence, the Company has filed C.P.No.35 of 2000 for rescheduling of repayment of the matured deposits by extending the time ranging from 12 to 48 months. The CLB by exercising *Suo Motu* Powers under Section 58-

A(9) of the Act, passed order, dated 29.02.2000 rescheduling the payment schedule by extending the time by 12 to 36 months depending upon the amounts to be refunded. After passing the said order, the CLB has reviewed the meeting from time to time regarding compliance of the order of CLB.

It appears that the Nagarjuna Holding Pvt. Limited (NHPL), which is controlling the majority equity capital in NFL Company, has entered into Memorandum of Understanding (MOU) with M/s.Mahalakshmi Factoring Services Limited (for short, 'MFSL') represented by its Director Sri Muthu Swamy on 13.09.2000. As per the said MOU, the NHPL has to transfer all its shares and equity capital in favour of MFSL and all the directors of NFL Company have to resign enabling the MFSL Company to nominate its directors for the purpose of management. The MFSL Company is entitled to take over all the assets of NFL Company and to recover all the dues from its debtors. The MFSL Company has to repay all the deposits, which have been collected by the NFL Company, as per order, dated 29.02.2000 passed by the CLB. However, the NHPL Company has to repay all the secured debts from banks. In pursuance of the said MOU, the NHPL has transferred all its shares and equity in favour of the nominees of MFSL. The Directors have resigned from their posts on 1st, 2nd, 8th and 16th September, 2000 and the Managing Director, Sri Sridhar Chary resigned on 31.01.2001. In the place of resigned directors and managing director, the MFSL has appointed its nominees to the board on 16.09.2000 and 31.01.2001. The new management has paid certain deposits amounting Rs.35 Crores to the depositors also. The NFL Company, which could not pay the remaining deposits, has filed C.P.No.27 of 2003 to the CLB for

rescheduling the repayment schedule by enlarging the period on the ground that the erstwhile promoter and erstwhile directors are responsible for the payment and they are not cooperating with the company. The CLB by its order, dated 23.06.2003 dismissed the said application and against the said order, C.A.No.15 of 2003 has been filed.

C.A.No.23 of 2003 is filed by one Sri Bapanaiah, who has deposited an amount of Rs.40 Lakhs with NFL Company. Since the NFL Company failed to repay the said deposit, he has filed C.P.No.49 of 2003 before the CLB for payment of deposited amount. The CLB passed order, dated 31.10.2003 to the effect that the issue relating to payment is before the High Court of Andhra Pradesh, and posted the matter to a later date. Against the said order, Company Appeal No.23 of 2003 has been filed.

W.P.No.17814 of 2004 is filed by the Depositors in NFL Company. It is alleged that the petitioners have deposited certain amounts with NFL Company and in spite of repeated demands, the NFL Company has failed to repay the deposited amounts. It is alleged that the erstwhile Directors of the NFL Company have advertised the NFL Company to be 2000 Crore Nargarjuna Group Company and solicited for deposit of the amounts. It is further alleged that the funds of the Company were diverted to other companies and on such allegations, the petitioners sought for investigation into the Company affairs including the change of Directors.

C.P.No.80 of 2004 is filed by the Reserve Bank of India for winding up of the NFL Company under Section 45 MC of the 1934 Act.

C.P.No.55 of 2002 and batch are filed by various depositors of

the NFL Company. It is alleged that the petitioners therein have deposited certain amounts in the NFL Company and the period of the deposits has also matured. In spite of repeated demands, the NFL Company is not repaying the deposited amounts.

The facts involved in all these matters are relating to the affairs of the NFL Company. In all these matters, the main issue is with regard to repayment of the deposited amount to the depositors and who is responsible for payment of the said amounts. Hence, all these matters are clubbed together.

The learned Single Judge has formulated three questions and referred the matter to the Division Bench. First, we will take up question No.2 as the said question much depends upon the facts.

Question No.2: Whether a person not a party to the proceedings before the CLB can be impleaded as party-respondent in appeal arising from an order of the CLB under Section 10-F of the Act?

Originally, the appellant in C.A.No.15 of 2003 has filed Company Application No.27 of 2003 before the CLB for rescheduling the repayment schedule and the same was dismissed by order, dated 23.06.2003. Against the said order, the appeal in C.A.No.15 of 2003 came to be filed. Originally, there are three respondents in the appeal i.e. the CLB, the R.B.I. and the Registrar of Companies. Application No.802 of 2003 has been subsequently filed for impleading the erstwhile promoter, erstwhile directors and holding companies as Respondent Nos.4 to 22. The learned counsel for the appellant has submitted that though MOU has been entered by the NHPL with MFSL, the said MOU was never acted upon and that new Directors are

only the nominees of

Sri K.S.Raju, who is the Promoter of the NFL. He has contended that K.S.Raju as well as other Directors of holding companies gave affidavits to provide funds for payment of deposited amounts. He has further contended that matter was entrusted to the independent Chartered Accountants, M/s.Kali and Company and the said Chartered Accountants Company has submitted the report pointing out the severe irregularities committed by the promoter and erstwhile directors. It is the case of the appellant that the promoter and erstwhile directors of the NFL Company are to be held responsible for payment of the amounts on the basis of the affidavits submitted by them and on these allegations, the learned counsel for the appellant sought for investigation into the affairs of the NFL Company and for impleading them as respondents to the appeal. On the other hand, the learned counsel for the proposed respondents has submitted that the NHPL has entered into MOU with MFSL on 13.09.2000 and as per the said MOU, the shares of NHPL have been transferred to the nominees of MFSL and all the erstwhile directors have resigned from the board and MFSL has nominated its directors to the board of NFL Company. The learned counsel for the proposed respondents has submitted that in view of the transfer of shares and equity and resignation of the directors, the promoter and erstwhile directors have nothing to do with the affairs of the Company after such transfer and the new management is only responsible for the affairs of the Company. It has been much emphasized by the learned counsel for the appellant that the promoter and erstwhile directors are only responsible for payment of the amounts. In view of the serious contentions regarding the liability of the promoter and erstwhile directors, it is necessary to consider whether erstwhile promoter and erstwhile directors are liable for the

affairs of the Company.

It is not in dispute about the execution of MOU between NHPL and MFSL on 13.09.2000. It is mentioned in the said MOU that the NHPL has to transfer all its shares and equity pertaining to NFL Company in favour of MFSL Company or to its nominees and the promoters and directors have to resign to enable MFSL to appoint its directors to the board of NFL Company. As per the said MOU, the NHPL Company is liable to repay only the secured debts owed to bankers. The MFSL Company will succeed to the assets of NFL Company and are entitled to recover all the dues from debtors to the NFL Company. The important clause in the said MOU is that the MFSL Company assumes the entire responsibility of repayment of deposits of NFL depositors. The learned counsel for the appellant has not seriously disputed about the execution of the MOU, but he has only contended that the MOU was never acted upon and the so-called new directors are only the nominees of promoter

Sri K.S.Raju. He has contended that MFSL Company is not in existence and management was never changed and records also not handed over. It is seen from the record that MOU has been signed by Sri Muthu Swamy on behalf of MFSL Company.

Sri K.S.Raju, the proposed respondent No.4, has filed Counter Affidavit along with documents evidencing transfer of entire preference equity and preference capital from NHPL and its associates to the nominees of MFSL Company. The documents further show endorsements, which were made on the reverse of the certificates by NFL Company, for transfer of preference capital and equity capital. Sri K.S.Raju filed one more affidavit, dated 10th October, 2008 enclosing certain documents i.e. copies of Form 32 filed with the Registrar of Companies, Andhra Pradesh, Hyderabad showing resignation of

erstwhile directors on 2nd, 8th, 10th and 16th September, 2000 and January 31st 2001 and appointment of

Mr.S.Ram Murthy and Anthony James on 16.09.2000 as nominees of the board of NFL. In fact, the certificate of Gopichand Bhattaram, Company Secretary was also filed in proof thereof to record the changes. The affidavit further encloses copies of reply affidavits filed by the NFL in O.A.Nos.76 of 2003, 129 of 2002 and 430 of 2002 filed before the Hon'ble Debt Recovery Tribunal, Andhra Pradesh, Hyderabad wherein NFL has admitted the signing of the MOU between NHPL and MFSL and the change of management in NFL by mentioning about the new management of MFSL. It is brought to our notice that Mr. N.Selva Raju as the President NFL Company (under new management) has filed counter affidavit in C.A.No.7 of 2000 stating that K.S.Raju, promoter is not personally liable for payment of the amount and it is only the NFL Company liable for the payment. In the said counter affidavit, it is not denied that there was change of management. Further, Sri Muthu Swamy has also filed affidavit in C.A.No.7 of 2001 to the effect that he representing MFSL joined as new promoter of NFL Company and offered to give security relating to the property of MFSL worth of Rs.18 Crores.

It is clear from the above-mentioned documents that the NHPL has transferred its shares and equity and the promoter and erstwhile directors have resigned from the respective posts and the MFSL Company has assumed the management of NFL Company along with its own nominee directors. The entries in the records of the Registrar of Companies, Andhra Pradesh, which are mentioned by the public office, go to show that the promoter and erstwhile directors have resigned and new directors assumed the charge. The new

management has filed affidavits in different proceedings at different levels accepting the change of management and after paying certain deposits amounting to Rs.35 Crores. They have also filed affidavits that they have adequate assets and receivables in NFL Company to pay all the deposits and they wanted additional time in the appeal. They cannot now be allowed to dispute about the change of management. The management, which has filed the present appeal, is the same management, which has accepted the change of management and liabilities of NFL Company. Hence, we are of the view that the promoters and erstwhile directors have ceased their interests from the date on which they have transferred their shares and resigned from the post of directors. Hence, the promoter and directors are not liable for the affairs of the Company after their resignation from the board of directors and consequently they are not personally liable to pay the amounts to the depositors.

Whether proposed respondents 4 to 22 are liable to be impleaded in the appeal.

The appeal is filed under Section 10-F of the Act against the order of the CLB dated 23.06.2003. The appellant has filed an application before the CLB for rescheduling the payment schedule by enlarging the time. The appellant has placed certain facts and hardships in payment of deposits to the depositors. The impugned order has been passed basing on the facts stated by the appellant and other material placed before the CLB.

The appeal is filed under Section 10-F of the Act and Section 10-F of the Act provides for entertaining the appeal on question of law only. The relevant provision is as follows:

Section 10-F:- Any person aggrieved by any decision or order out of Company Law Board may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to in on any question of law arising out of such order.

The question of law under Section 10-F of the Act always depends upon the facts and circumstances of the case. It is however, to be borne in mind that the question of law has to arise out of facts, which are already on record. The appeal is extension of proceedings of CLB. Since the appeal is filed against the order of CLB, the facts and material which are placed on record before the CLB should be the basis for this Court to decide any question of law arising out of the facts already on record in the appeal filed under Section 10-F of the Act. No new facts can be looked into it. In the instant case, certain material has been placed before the CLB and the CLB has passed the impugned order. Except the appellant, no other party has participated in the proceedings before the CLB. This Court has to decide the matter based on the material in the appeal under Section 10-F of the Act. If third parties are impleaded, consequent new material has to be placed in the appeal for consideration for determining the issues after impleading the third parties. But, appeal under Section 10-F has to be confined to the only question of law. In other words,

Section 10-F prohibits the consideration of facts much less new facts. Hence, there is no scope for introduction of either new facts or new parties in the appeal. If new parties are allowed to come on record, it would enlarge the scope of appeal by accepting new facts and the evidence, which is against to the scope and spirit of Section 10-F of the Act. Hence, we are of the view that the Appeal under Section 10-F

of the Act is confined to only question of law, and this Court has no power to add any new parties to the appeal.

Whether the Company Court exercising its jurisdiction under the provisions of the Companies Act, 1956 can direct investigation into the affairs of a company by an independent agency like the Central Bureau of Investigation or any other independent investigating agency by lifting the corporate veil?

The appellant has filed C.A.No.15 of 2003 against the order of CLB dated 23.06.2003 and filed an Application No.693 of 2003 for directing the promoter and erstwhile director of NFL Company to provide funds for payment of the deposited amounts. In the said application, the appellant has filed another application seeking a direction to conduct investigation into the affairs of the Company by independent agencies. The depositors have filed W.P.No.17814 of 2004 directing the Central Government to conduct enquiry by the Central Bureau of Investigation regarding the affairs of the NFL Company. In the affidavits filed in C.A.No.15 of 2003 and W.P.No.17814 of 2004, number of allegations are levelled against the promoter and erstwhile directors of the NFL Company. The respondent promoter and erstwhile directors of NFL Company have filed counter affidavits and denied all the allegations. We are not going into merits and demerits of the allegations. We are concerned with the mode of investigation into the irregularities if any committed by the Directors present and past.

Sri Anil Kumar, learned counsel for the appellant as well as Sri M.V.Durga Prasad, learned counsel for the depositors have contended that there are severe irregularities committed by promoter and erstwhile directors including diversion of funds from NFL Company to

other Companies and consequently there are no amounts in the Company for repayment of the deposits and submitted that if thorough investigation is carried out by an independent agency like C.B.I., fraud and irregularities committed by the promoter and erstwhile directors would come out and it would be beneficial to the depositors. On the other hand,

Sri S.Ravi, learned Senior Counsel for the proposed respondents has submitted that there are sufficient provisions in law to safeguard the interests of the depositors and the members of the Company and there are certain provisions to conduct investigation into the affairs of the Company including the misdeeds of past directors and penalties thereof. The learned counsel has submitted that the persons appointed under the Act are more competent to go into the affairs of the Company instead of outside agency, which is not well versed with the intricacies of working of the companies. The learned counsel further submitted that there is no material on record to show that the promoter and erstwhile directors have committed irregularities and it is only to put pressure on them, the present management and depositors are seeking for investigation through CBI. In the background of the above rival contentions, whether this Court can exercise the power under the Act or order investigation through independent agency. In the course of arguments, it is suggested by Sri Anil Kumar and Sri M.V.Durga Prasad that a High Power Committee may be appointed to look into the affairs of the Company but Sri S.Ravi, learned Senior Counsel did not accept the said proposal.

The Act is a self-contained Code containing relevant and adequate provisions right from incorporating the Company till winding up of the company and payment of amounts to the creditors even after

winding up of the company by the independent authority like Official Liquidator. There are two sets of remedies available for the grievance against the company and its management. One set of procedure is provided for the depositors and another set is provided for the members of the Company.

The depositor who is an unsecured creditor has to file application under Section 58-A & AA of the Act for the purpose of refund of his money before the CLB. The CLB on the application filed by the creditor has to conduct enquiry and pass order directing the Company to pay the amount to the said creditor. The order of CLB passed under Section 58-A & AA of the Act is enforceable under Section 634-A of the Act. As per the provisions of Section 634-A of the Act, the order of CLB is deemed to be a decree and executable under the provisions of CPC.

Notwithstanding the right under Section 58-A & AA of the Act, the depositor has right to file a petition under Section 433 of the Act for winding up of the Company as the company failed to discharge its financial obligations/commitments towards its creditors. On filing the winding up petitions under Section 433 of the Act, the Court after giving opportunity to the company may pass order of winding and appoint the Liquidator to the company. Once the Liquidator is appointed, the management of the Company ceases to function and the Official Liquidator would take charge of the Company. The liquidator is entitled to recover the dues of the company or to do all the acts for discharging the liabilities of company and distribute the sale proceeds among the creditors. The Official Liquidator is also entitled to go into the mismanagement of the company by present and past directors and appoint Tax Inspectors and other persons under Section

538 of the Act for the purpose of investigation into the affairs of the company. The present and past management is liable for the offences, if any committed by them, as per Sections 539 to 545 of the Act. Hence, the provisions of Sections 58-A & AA and 634 of the Act will safeguard the interests of the depositors prior to winding up and Sections 433, 538 to 545 of the Act would take care of the depositors.

Sections 235 to 242 of the Act provides for investigation into the affairs of the company either by the Central Government or by the Registrar of Companies or at the instance of members of the company. Section 235 provides for investigation by the Central Government regarding the affairs of the company and the Central Government is entitled to appoint inspectors to investigate into the affairs of the company on the report of the Registrar. Section 237 provides for investigation on the recommendation of the CLB. Sections 239 to 240 provide for the powers and procedure for investigation and under Section 241, the inspector has to submit the report. The Government is entitled to prosecute the persons responsible for the offences under Section 242 and Section 244 provides for recovery of damages. These provisions would safeguard the interests of the members of the company. Apart from the said provisions, the members of the company can file winding up petition under the Act in case the management is not acting in the interest of the company.

The above-mentioned provisions clearly show the safeguards provided under the Act. The depositor is entitled to approach under Section 58-A & AA of the Act and execute the same as per the decree under Section 434-A of the Act. The depositors in W.P.No.17814 of 2004 without approaching the CLB for recovery of their amount, straight away filed the writ petition seeking for investigation into the

affairs of the company. The petitioners in W.P.No.17814 of 2004 having not availed the effective remedies under the Act cannot ask for investigation into the affairs of the company by independent agency. The Apex Court in **Sri Ramdas Transport Limited v. Tadi Adinarayana Reddy**[1] disapproved the practice of approaching the Court under Article 226 of the Constitution of India without utilizing elaborate machinery provided under the Act and held as under:

> "11. Under Section 397 of the Companies Act any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member of members may apply to the Company Law Board for an order under that section. The Company Law Board has wide powers to make such orders as it may think fit to bring an end to the matters complained of. Some of the shareholders of the first appellant-company have, in fact, filed petitions under Sections 397 and 398 of the Companies Act before the Company Law Board in which they have asked for similar reliefs including the appointment of an interim administrator. The acts of mismanagement and oppression complained of are similar to those set out in the writ petition before the High Court. The only ground alleged in the writ petition for moving the High Court under Article 226 is that the Company Law Board is not moving in the matter! Under an excuse that the Company Law Board has not yet made an order, a shareholder cannot be allowed to by pass the express provisions of the Companies Act and move the High Court under Article 226. A shareholder has very effective remedies under the Companies Act for prevention of oppression and mismanagement. When such remedies are available, the High Court should not readily entertain a petition under Article 226."

In view of the provisions for safeguarding the interests of the depositors and mechanism provided for unearthing the frauds committed by the past and present directors and the punishment

thereof in the Act, we are of the view that there is no necessity to order investigation by an independent agency like C.B.I. or any other agency and on the other hand, the remedies can be worked out within the framework of the Act.

Whether failure of the company to repay the deposited amounts to the deposit-holders, can be challenged, as a matter of public interest in an appeal under Section 10-F of the Act filed against an order of Company Law Board.

Section 10-F of the Act provides for appeal against the order of the CLB on the question of law. The said provision was already mentioned while answering question No.1. Section
10-F gives limited right of appeal on the question of law and the facts cannot be looked into. The depositor, whose money is not paid by the company is entitled to file application under Section 58-A & AA of the Act and if the order for payment is made by the CLB, the said order can be executed under Section 434-A of the Act. Sections 58-A & AA and 434-A provide sufficient safeguards to the depositors. The said Sections provide individual rights to the depositors for recovery of the amount. Since the recovery is a matter of individual right, it is for the individual to exercise the right and recover the money. There would be no common interest among the depositors to the extent of recovery of the amounts. It is for every depositor to approach the CLB for recovery of the amount. Since there is no common interest among the depositors before the CLB, which is the original authority, no application in the nature of public interest before the CLB is maintainable. Hence, the appeal arising out of the order of CLB under Section 10-F of the Act in the nature of Public Interest is not maintainable.

C.A.No.15 of 2003: This appeal is filed against the order of the CLB dated 23.06.2003, wherein the CLB has refused to enlarge the time as sought by the NFL Company. Even the time sought by the NFL Company has expired long back and there is no issue to be decided in the appeal, and nothing as such survives.

C.A.No.23 of 2003: This appeal is filed against the order of the CLB dated 31.10.2003, wherein the CLB has adjourned the matter. We have already answered question No.1 holding that the depositors have to work out the remedies under Section 58 A & AA and 634-A of the Act. The appellant has submitted written arguments stating that the CLB has already passed order on 21.08.2001 ordering the NFL company to pay the amounts to the appellant, but the NFL company has not paid the amount as per the said order. In view of the order passed by the CLB under Section 58 A & AA of the Act, the appellant is entitled to execute the decree under Section 634 of the Act. Hence, no further orders are required.

W.P.No.17814 of 2004: This writ petition is filed by the depositors seeking investigation by the Central Bureau of investigation into the affairs of the NFL company including the change of directors. This issue has been covered by question No.1 and we held that the remedies have to be worked out within the framework of the Act. In the result, the writ petition is disposed of directing the petitioners to avail the remedies under the provisions of the Act.

W.P.No.3780 of 2004: This writ petition is filed by a practicing Advocate seeking to declare the inaction on the part of the Registrar of Companies, the first respondent, in prosecuting respondents 4 and 5 herein under Section 58-A (10) of the Act as illegal and violative of

Article 14 of the Constitution of India. The entire gamut of approach and the attack is virtually one and the same lines as being made by various petitioners in these very proceedings. Having regard to the observations and the findings, which have been give above, nothing remains to be considered afresh or independently in regard to the very same inaction on the part of the Registrar of Companies. Hence, nothing survives and the writ petition is dismissed.

C.P.No.80 of 2004: This Company Petition is filed by the Reserve Bank of India under Section 45 MC of the 1934 Act for winding up of the NFL Company. It is alleged that the NFL Company has applied to the RBI on 27.06.1997 for registration of the company under Section 451A of the 1934 Act to function as Non-Banking Financial Company (NBFC). After verification, the Bank has issued show cause notice to the company pointing out severe irregularities. The Company has sought for more time for giving reply to show cause notice, but no reply was submitted. Ultimately, the NFL Company wrote a letter on 22.11.2000 requesting the bank to permit the NFL Company to withdraw the application, dated 27.06.1997. The bank has dismissed the said application by order, dated 26.02.2001. Thus, the NFL Company has no registration to function as NBFC and it can no more do the business either accepting the deposits or lending. Further, it is alleged that the bank has inspected the records of the NFL Company and as per the un-audited report, the NFL Company has re-paid the deposits as per the CLB order, dated 29.02.2000. The Bank on verification came to conclusion that the Company is not able to repay the deposits. It is further alleged that due to

non-compliance of the CLB order, dated 29.02.2000, the Company is disqualified to function under Section 451-A of the 1934 Act. On these allegations, the RBI has filed the winding up petition.

There is no dispute whatsoever about the allegation made by the RBI. In fact, the NFL Company has no registration to function as NBFC and it has no right to function. The NFL Company has not even paid a single deposit since 2002 and there is no chance of repayment of the deposits. From the above facts, it is clear that the Company shall not be allowed to function in the interest of public. The facts squarely satisfy the conditions laid down in Section
451-A of the 1934 Act for winding up of the company. In view of the fact that the company is not discharging its duty, there is no option except to wound up the company and the liquidator be appointed.

C.P.No.55 of 2002 and batch: Various company petitions have been filed by the different creditors seeking winding up of the NFL Company. It is alleged that each petitioner in Company Petitions has deposited certain amounts with the NFL Company and the said deposits have got matured and the NFL Company failed to pay the amounts. The petitioners have issued Statutory Notices under Section 434(1) of the Act to repay the amounts. In spite of those statutory notices, the Company neither paid the amounts nor replied to the notices. Since the NFL Company failed to pay the amounts, the depositors have filed these applications for winding up of it. This Court ordered notice to the NFL Company. The learned counsel for the applicant has contended that instead of winding up the company, the erstwhile promoter and erstwhile directors may be directed to provide funds for payment of deposits. However, the NFL Company has not disputed about the payments due to the company and not made attempts to pay the amounts. The learned counsel for the applicant company has not denied that there were other directors of MFSL in NFL Company but has only contended that the new directors were

acting at the behest of
Sri K.S.Raju and erstwhile directors. It is clear that MFSL is in the control of the NFL Company having acquired equity shares from NHPL and their nominee directors Sri Selva Raj and others were in-charge of the Company since September, 2000. Since the NFL Company has not paid the amounts due to the depositors, there is no option except to order for winding up of the Company and appoint the Official Liquidator to manage the NFL Company.

In the result, all the petitions filed by the R.B.I. and the depositors seeking winding up of the Company, are allowed and the NFL Company is ordered to be wound up and the Official Liquidator is appointed to take charge of the Company.

In spite of the directions issued by this Court, the statement of affairs of the NFL Company has not been filed. However, it has been pointed out that such statement has already been filed. These are all matters to be considered by the learned Single Judge including as to the correctness of the statement of affairs and also any details in this regard. Hence, we will not go into this aspect.

Having regard to the answers given to the questions, which have been referred to hereinabove, except Writ Petition Nos.3780 and 17814 of 2004, Company Appeal Nos.15 and 23 of 2003 and Company Petition Nos.55 of 2002, 15, 56, 57, 75, 76, 77, 87, 91, 93, 94, 101, 102, 113, 115, 117, 123, 126, 127, 129, 130, 131, 132, 134, 135 and 153 of 2003; 80, 162, 190 and 195 of 2004; 109, 110, 119 of 2005 and 77 of 2006 are referred back to the learned Single Judge for disposal.

The Registry is directed to place Company Appeal Nos.15 and 23 of 2003 and Company Petition Nos.55 of 2002, 15, 56, 57, 75, 76, 77, 87, 91, 93, 94, 101, 102, 113, 115, 117, 123, 126, 127, 129, 130, 131, 132, 134, 135 and 153 of 2003; 80, 162, 190 and 195 of 2004; 109, 110, 119 of 2005 and 77 of 2006 before the learned Single Judge accordingly.

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B.PRAKASH RAO, J

30th MARCH, 2010.

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R.KANTHA RAO, J

Note: L.R. Copy be marked.

kvni

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[1] 1997(5) Supreme 29